

House Bill 451 (AS PASSED HOUSE AND SENATE)

By: Representatives Lewis of the 15th, Stephens of the 164th, Parrish of the 156th, and Watson of the 91st

A BILL TO BE ENTITLED
AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to change certain provisions relating to income tax credits for film, video, or digital productions in this state; to provide for a program of tax refunds for companies creating and expanding certain tourism attractions; to provide for a short title; to define terms; to state legislative findings; to provide for conditions of eligibility and approval by the Department of Economic Development and a local government; to provide for agreements between that department and companies; to provide for regulations; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in Code Section 48-7-40.26, relating to income tax credits for film, video, or digital productions in this state, by revising paragraph (9) of subsection (b) as follows:

~~"(9) 'Tier' means a tier as designated pursuant to Code Section 48-7-40, as amended. In the event production expenditures will occur in more than one taxable year for a particular state certified production, the commissioner shall prescribe redesignation procedures to ensure that the production company can claim credits for such state certified production in future years without regard to whether or not a particular county is reclassified in a different tier~~ Reserved."

SECTION 2.

Said title is further amended by revising subsections (c) and (d) of said Code Section 48-7-40.26 as follows:

"(c) For any production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004,

there shall be allowed an income tax credit against the tax imposed under this article. The tax credit under this subsection shall be allowed if the base investment in this state equals or exceeds \$500,000.00 for qualified production activities and shall be calculated as follows:

(1) The production company shall be allowed a tax credit equal to ~~9~~ 15 percent of the base investment in this state;

~~(2) If the base investment in this state is in a tier 1 or tier 2 county, the production company shall be allowed an additional tax credit equal to 3 percent of such base investment~~ Reserved;

(3) If Georgia residents are employed in the production, the production company shall be allowed an additional tax credit equal to 3 percent of the total aggregate payroll of Georgia residents; and

(4) If the base investment in this state is in excess of \$20 million for multiple television projects, the production company shall be allowed an additional tax credit equal to 2 percent of such base investment.

(d) For any production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state exceeded \$30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. For purposes of this subsection, the excess base investment in this state is computed by taking the current year production expenditures in a state certified production and subtracting the average of the annual total production expenditures for 2002, 2003, and 2004. The tax credit shall be calculated as follows:

(1) If the excess base investment in this state equals or exceeds \$500,000.00, the production company and its affiliates shall be allowed a tax credit of ~~9~~ 15 percent of such excess base investment;

~~(2) An additional tax credit of 3 percent shall be allowed to the production company and its affiliates that qualify for and claim a credit under paragraph (1) of this subsection but only with respect to that portion of such production company's and affiliate's base investment that is the difference between the production expenditures in a state certified production in a tier 1 or tier 2 county in the current year and the average of the aggregate production expenditures made in those same counties for the years 2002, 2003, and 2004~~ Reserved;

(3) If Georgia residents are employed in the production, the production company and its affiliates shall be allowed an additional tax credit equal to 3 percent of the difference between the total aggregate payroll of Georgia residents, which is includable in the base

investment in the current year, and the average of the aggregate payroll of Georgia residents for the years 2002, 2003, and 2004; and

(4) If the excess base investment in this state is in excess of \$20 million for multiple television projects, the production company and its affiliates shall be allowed an additional tax credit equal to 2 percent of the difference between the production expenditures in a state certified production for multiple television projects in the current year over the average of the production expenditures for multiple television projects for the years 2002, 2003, and 2004."

SECTION 3.

Said title is further amended in Chapter 8, relating to sales and use taxation, by adding a new Article 5 as follows:

"ARTICLE 5

48-8-240.

This article shall be known and may be cited as the 'Georgia Tourism Development Act.'

48-8-241.

As used in this article, the term:

(1) 'Agreement' means a tourism attraction agreement entered into, pursuant to Code Section 48-8-245, on behalf of the Georgia Department of Economic Development and an approved company, with respect to a tourism attraction project.

(2) 'Approved company' means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, or any other entity that is seeking to undertake a tourism project pursuant to Code Section 48-8-245 and is approved by the commissioner of economic development and by the governing authority of the city where the tourism attraction project is to be located if within a city or otherwise by the governing authority of the county where the tourism attraction project is to be located.

(3) 'Approved costs' means:

(A) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;

(B) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(C) All costs for construction materials and equipment installed at the tourism attraction project;

(D) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

(E) All costs of architectural and engineering services, including but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;

(F) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;

(G) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications and including off-site construction of the facilities paid for by the approved company; and

(H) All other costs comparable with those described in this paragraph.

(4) 'Incremental Georgia sales and use tax' means those state sales and use taxes generated by the project above the amount of sales and use taxes generated by the previous use of the property on which the project is located.

(5) 'Tourism attraction' means a cultural or historical site; a recreation or entertainment facility; an area of natural phenomenon or scenic beauty; a convention hotel and conference center; a race track with lodging and restaurant and other tourism amenities; a golf course facility with lodging and restaurant and other tourism amenities; marinas and water parks with lodging and restaurant facilities; or an entertainment destination center, designed to attract tourists to the State of Georgia, subject to the following conditions:

(A) A tourism attraction shall include commercial lodging facilities if the facilities constitute a significant portion of a tourism attraction project or the facilities are to be located on recreational property leased from a county, a municipal corporation, the state, or the federal government; and

(B) A tourism attraction shall not include the following:

(i) Facilities that are primarily devoted to the retail sale of goods, shopping centers, restaurants, or movie theaters; or

(ii) Recreational facilities that do not serve as a likely destinations where individuals who are not residents of the state would remain overnight in commercial lodging at the tourism attraction project.

(6) 'Tourism attraction project' or 'project' means the real estate acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of 30 years, construction, and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction project, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions if paid for by the approved company.

48-8-242.

The General Assembly finds and declares that the general welfare and material well-being of the citizens of the state depend in large measure upon the development of tourism in the state; that it is in the best interest of the state to induce the creation of new tourism attractions and the expansion of existing tourism attractions within the state in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the sales and use tax refund offered by the State of Georgia to approved companies and preserving and creating sources of tax revenues for the support of public services provided by the state; that the purposes to be accomplished under the provisions of this article are proper governmental and public purposes for which public moneys may be expended; and that the inducement of the creation and expansion of tourism attraction projects is of paramount importance to the economy of the state, mandating that the provisions of this article are to be liberally construed and applied in order to advance public purposes.

48-8-243.

(a)(1)(A) In consideration of the execution of the agreement each approved company shall be granted a sales and use tax refund from the incremental Georgia sales and use tax and all local sales and use taxes on the sales generated by the approved company and arising at the tourism attraction.

(B) In consideration of the execution of the agreement each approved company shall be granted a sales and use tax refund from the incremental Georgia sales and use tax and all local sales and use taxes on the sales generated by the approved company that are attributable to and connected with any project to be a part of or an addition to an existing tourism attraction. Each approved company shall keep and maintain annual records that delineate the increase in sales created by a project at an existing tourism attraction in order to be eligible to be granted a refund for that increase in sales.

(2) The approved company shall have no obligation to refund or otherwise return any amount of this sales and use tax refund to the persons from whom the sales and use tax was collected.

(3) For all tourism attractions the term of the agreement granting the sales and use tax refund shall be ten years.

(4) This time period shall commence on the later of:

(A) The final approval of the agreement for purposes of the sales and use tax refund; or

(B) The effective date specified in the agreement.

(b) Any sales and use tax collected by an approved company on sales transacted after final approval but prior to the commencement of the term of the agreement shall be refundable as if collected after the commencement of the term and applied to the approved company's first year's refund after activation of the term and without changing the term.

(c) The total sales and use tax refund allowed to the approved company over the term of the agreement shall be equal to the lesser of the total amount of the sales and use tax liability of the approved company or 25 percent of the approved costs for the tourism attraction project, subject to the following conditions:

(1) The sales and use tax refund shall accrue over the term of the agreement in an annual amount equal to 2.5 percent of the approved costs; and

(2) Notwithstanding the foregoing 2.5 percent limitation, any unused sales and use tax refunds from a previous year may be carried forward to any succeeding year during the term of the agreement.

(d) On or before March 31 of each year during the term of the agreement, an approved company shall file with the department a claim for sales and use tax refund collected by the approved company and remitted to the department during the preceding calendar year pursuant to subsection (c) of this Code section.

(e) The department, in consultation with other appropriate state agencies, shall promulgate administrative regulations and require the filing of a refund form designed by the department to reflect the intent of this article.

48-8-244.

(a) The commissioner of economic development, in consultation with other appropriate state agencies, shall establish standards for the filing of an application for tourism attraction projects by the promulgation of administrative regulations.

(b) An application for a tourism attraction project filed with the Department of Economic Development shall include: marketing plans for the tourism attraction project that target individuals who are not residents of the state; a description and location of the tourism

1 attraction project; capital and other anticipated expenditures for the tourism attraction
2 project and the anticipated sources of funding therefor; the anticipated employment and
3 wages to be paid at the tourism attraction project; business plans which indicate the average
4 number of days in a year in which the tourism attraction project will be in operation and
5 open to the public; and the anticipated revenues to be generated by the tourism attraction
6 project.

7 (c) The commissioner of economic development and the local governing authority
8 specified in paragraph (2) of Code Section 48-8-241 may grant approval to the tourism
9 attraction project if the project shall:

10 (1)(A) Have approved costs in excess of \$25 million if the project is to be a new
11 tourism attraction.

12 (B) Have approved costs in excess of \$10 million if the project is to be a part of or an
13 addition to an existing tourism attraction;

14 (2) Have a significant and positive economic impact on the state considering, among
15 other factors, the extent to which the tourism attraction project will compete directly with
16 existing tourism attractions in the state and the amount by which increased state and local
17 tax revenues from the tourism attraction project will exceed the refund to be given to the
18 approved company;

19 (3) Produce sufficient revenues and public demand to be operating and open to the public
20 for a minimum of 120 days per year; and

21 (4) Not adversely affect existing employment in the state.

22 48-8-245.

23 (a) The Department of Economic Development, upon final approval of a tourism attraction
24 project application, shall enter into an agreement with any approved company and the
25 terms and provisions of each agreement shall include, but not be limited to:

26 (1) The projected amount of approved costs, provided any increase in approved costs
27 incurred by the approved company and agreed to by the department shall apply
28 retroactively for purposes of calculating the carry forward for unused sales and use tax
29 refunds as set forth in subsection (c) of Code Section 48-8-243 for tax years commencing
30 on or after the effective date of this article;

31 (2) A date certain by which the approved company shall have completed the tourism
32 attraction project and begun operations. Upon request from any approved company that
33 has received final approval, the Department of Economic Development shall grant an
34 extension or change, which in no event shall exceed 18 months from the date of final
35 approval, to the completion date as specified in the agreement with an approved
36 company;

1 (3) The term shall be ten years from the later of:

2 (A) The date of the final approval of the tourism attraction project; or

3 (B) The original effective date specified in the agreement, if this effective date is
4 within three years of the date of the final approval of the tourism attraction project."

5 **SECTION 4.**

6 This Act shall become effective upon its approval by the Governor or upon its becoming law
7 without such approval.

8 **SECTION 5.**

9 All laws and parts of law in conflict with this Act are repealed.